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impatience of constituted order which marks the "free-born American." Democracy is not a state of nature but of civilization. The true democrat, who respects his neighbor's freedom as he respects his own, is not the man of crude instincts but the man whose instincts are most enlightened and refined. And for a state of freedom we must turn, not to a primal condition of simplicity from which we have fallen—an Eden, now corrupted by culture—but to a condition which, in our own as in other countries, is yet to be attained, and which in its perfection presupposes a millennium when civilization shall be complete. The democratic ideal is that of a society of perfectly intelligent and cultivated men. It is, in a word, the ideal of a society of gentlemen. For not only is the problem of adjusting social relations upon a democratic basis a task for the highest intelligence, but the maintenance of such adjustment calls for nothing less than the finest sense of honor, justice, self-respect and personal responsibility, the most perfect self-control, and the broadest capacity for understanding and forming a just estimate of differing individual points of view.

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LAW AND ETHICS.*

The integrity of no profession is so often or so wrongfully attacked as is the legal. An incident illustrates the common thought. At a banquet given in honor of a leading member of the bar the toast announced was "an honest lawyer, the noblest work of God." Quick as a flash thereafter came from the lower end of the table the response, "and the scarcest."

I do not stop to answer these aspersions. And yet I can not refrain from noticing the experiences of a San Francisco publishing firm. By last year's fire its entire plant, including its letters, letter books and books of account, was destroyed.

* An address before the Society for Ethical Culture, of New York, Sunday, April 21st, 1907.

All evidences of claims in its favor were gone, and it had only its general recollection of its business. It caused circulars to be prepared stating these facts and sent to the various lawyers named in a legal directory. Out of \$175,000 believed to be the extent of outstanding claims, \$150,000 has been paid. Can any profession make a better showing? How seldom you hear of a lawyer betraying his client. Indeed, the chief criticism is that he is too loyal to that client, and in discharging what he believes to be his duty, to him, forgets his obligations to the public. But I look forward and not backward. No man is so good that he cannot be better, and there is no profession whose thought and life cannot be improved, and I may add, there is no profession which makes a stronger appeal to its members to come up higher.

My friend, Dr. Lyman Abbott, in a recent address, described the advance of the race as in three stages: First, despotism; second, individualism, and lastly, the coming age of frater-nalism. I do not quite like his division. I think there are really but two steps, despotism and individualism: despotism, where one man controls others; individualism, where each man controls himself. There is doubtless a difference in the quality of the despotism as well as of the individualism. One despot may be selfish, saying, as did Louis XIV, "The State! I am the State," and regard the services of all as designed and to be used for his personal aggrandizement and glory, while another may aim to improve the welfare of his subjects, striving in all things to make their lives better and happier. One is a selfish despotism, the other a benevolent; but still in each there is the ever-present thought of one man's control over others. In like manner there may be a selfish or a benevolent individualism. In the one the individual thinks only of self, and all his actions are prompted by and intended for his own pleasure, profit or power. In the other the individual realizes that he is one member of society, and that while he controls his own actions it is his moral duty to so act that the general welfare will be promoted. In that sense of the term, frater-nalism may aptly describe the coming social era.

The day of selfish individualism is surely, even if slowly,

passing away, and that of the benevolent is taking its place. We are coming to understand something of the meaning of the fatherhood of God and the brotherhood of man. Brotherly love widens to the nation's borders, and neighbor has been introduced into the vocabulary of international law. Society is no longer regarded as a collection of independent and isolated particles, but as an organism, each member of which is doing not merely the work of himself as an individual, but also that of the society, the public.

Society owes to every one of its members justice. The lawyer is the appointed agent of society to secure that result. Justice is his function. Whether he prosecutes or defends, whether he is acting as lawyer or judge, in his office or in the court room, preparing documents or giving advice, he acts not for himself alone, nor only for his client, but for the community. He is doing the work of the social organism. His business is to make a living for himself and family by the practice of law, but the law is something more than business—it is a profession, and as a profession, it is that to which society entrusts the administration of justice.

But society seeking justice can never ask for wrongdoing to accomplish it. It does not rob Peter to pay Paul. It does not call upon a lawyer to be dishonest and act the scoundrel in order to secure to his client vindication and justice. Sometimes in momentary passion it may strive to inflict unjust punishment upon the individual, and then the lawyer, defending his client, apparently acts against his obligations to the public. But really he is most loyally discharging his duty to society, for he is striving to exact from it that which it rightfully owes, justice to all, even the humblest and the most detested of its members. As the ultimate thought—the final purpose—of society is righteousness, its call upon every individual acting for it must be for a like righteousness. Paul's conception that we are all members of one body is something more than a theological doctrine; it extends beyond the limits of the church and embraces the entire community. Now, every organ of the body has its separate function and must faithfully perform its own work or else the body as a whole will

suffer. The call, therefore, of the body as a whole is upon each organ to do its own work and to do it in the best way. It may not call upon one to act wrongfully for the sake of another. The head may not say to the heart, dishonor thyself for my sake, for the result is dishonor to the whole body, including the head.

No one of a social body can rightfully do that which it would be unjust for the body as a whole to do. In that may be found the ethics of the future. The Golden Rule and the Good Samaritan are not limited to the home, but extend to the nation—yes, to humanity. The obligations of society are founded upon them. Our public charities, the laws regulating social conduct, including therein, broadly speaking, our penal laws, and the increasing volume of international law, all rest upon the thought of a social unit and the community of all individuals in it. From the duty of society we determine the duty of the individual. Our highest ideal of society is one in which absolute honesty and justice obtain.

The true community cannot be separated into two classes, one serving the community and the other serving itself. All must alike seek the common welfare, and we can have no perfect society until that is universally true. We say that in this country the people rule, that each man is a voter and has an equal voice in determining the policies of the nation. But voting is not the only way of serving the public. The whole life of the individual should be helpful to the general good. No one should ever forget that his life is part of and goes to make up the whole national life, that the one either promotes and blesses or hinders and degrades the other. No profounder truth was ever uttered than this, that "none of us liveth to himself, and no man dieth to himself."

As I have already said, there is no profession to which a stronger appeal is rightfully made. In every community the lawyer is a leader. He is a trusted counselor. If he fails, who shall stand? The idea of his professional life is loyalty to the common welfare and not pecuniary or political success. His object is the promotion of justice; for it is a most serious misconception to suppose that justice is specially and solely

the object of the work of the judge, while the lawyer's is merely the success of his client. The old idea that a lawyer must be all that his client wishes is passing away. He has no right to barter his own integrity, to sell his honor or his conscience. The court room should always be other than a mere arena in which intellectual athletes meet, striving simply to trip and throw each the other. The judge is something more than the umpire of a debate. Judge and counsel should alike in every law suit have as the supreme thought and purpose, the establishment of justice. That will be most likely secured when counsel on each side fairly, candidly and fully, present all the facts and the law as he understands them.

A single illustration may be given. In the community in which the lawyer, Abraham Lincoln, lived, a murder was committed. No one saw the deed. A tramp was suspected, arrested and placed on trial. Lincoln was appointed to defend. The testimony was circumstantial, but tended to show the defendant's guilt. Lincoln, evading nothing, suppressing nothing, helped the prosecuting attorney to bring out all the facts. Then, addressing the jury, he called attention to those matters which pointed to the defendant's guilt, as well as those which made in his favor, and closed his argument by saying in substance, "I have looked this matter over fully, candidly, and while I concede that the testimony bears against my client, I am not sure that he is guilty. Are you?" The defendant was acquitted and the real criminal afterwards found and convicted. Confidence in Lincoln's integrity won the case. Not only that, it resulted in the triumph of justice. A lie has no place in a court room, and half a truth is, as we all know, often the worst kind of a lie. A verdict won by a falsehood is a disgrace to the counsel, and equally so a verdict won by a trick. That success is really a defeat, for it makes a profession consecrated to the pursuit of justice, an instrument of injustice.

A true lawyer may not say, "I know that my words are false, but it is not I but my client who is lying. I know that judge and jury are being deceived, imposed upon, but I am merely potter's clay in my client's hands, fashioned by him

for the moment into a vessel of dishonor. The moment the trial is over I will refashion myself into a vessel of honor." No such moral transformation is possible. The whole body has been corrupted by this poison of the individual.

Neither should a lawyer leave his conscience behind him when he enters his office. Standing face to face with his client he is not alone with that client. The whole organism of society is with him, demanding that his advice shall be something more than how to succeed, and shall include how to do justice.

In the present day of intense commercialism the lawyer cannot escape its temptations. Indeed, in some aspects, he is more exposed than others. The rapid accumulation of money is a mania. "Money-mad" was the criticism placed upon a gentleman who personally, socially and in the ordinary affairs of life was kind, considerate in his treatment of those in his employ, generous, and, according to purely legal standards, honest, but who in the domain of business had acted apparently upon the theory that whatever was not positively prohibited by statute is morally right; and so in many ways, some of which were certainly open to criticism, had accumulated a large property. Such a man will seek the brainiest counsel, one who can advise correctly as to the precise limits of the law, but his only thought is of the brains and knowledge, and the lawyer who best answers that thought will get employment and compensation corresponding to the pecuniary returns which follow the advice. Counsel responding to his demands may in one sense of the term be honest, but it is a negative honesty. It is an honesty which regards simply the client, the statute, and the pay. It is an honesty which ignores the fact that both client and counsel are members of society, and assumes that there is no moral obligation upon either to respect the general welfare. They put themselves into antagonism to those obligations which every lover of his country should feel, and as the multitude of clients of this character increases, so is there an increasing reaching out for counsel who will respond to their demands. Pecuniary compensation follows the success of the advice which is given, of the

services which are rendered. Is it strange that there should be so much criticism of the bar? Or that there is a common feeling which finds expression in a denunciation of the profession as though it were wholly unworthy. As against this, there is an ever-growing conviction which will assert itself positively, which cannot be ignored and which will strengthen until it compels every lawyer to advise his client not merely what is legal, but also what is honest. We all know that the wisdom of the lawmaker can never keep pace with the ingenuity of trained minds seeking to evade legal limitations. The old saying that holes may be found in every law, means simply that an ingenious lawyer can often find, either in the statute itself or in the mode prescribed for its enforcement, some way of escape from its penalties. It is this which provokes the frequent remark that the law so seldom reaches the rich. As against this I appeal for a higher standard of professional ethics. I appeal to every lawyer to put his heart alongside his head, to mix his conscience with his brains. Let him have the courage to say to his client, "It may be legal, but it is dishonest and I will have nothing to do with it."

Is this asking too much of the profession? Certainly not if it intends to be, what it is appointed to be, the instrument of society by which justice is accomplished. As we stand in this day of our nation's prosperity, facing the temptations which attend national wealth, one of the surest guarantees against the descending course which so often follows an abundance of wealth is the highest integrity on the part of that profession which has most to do with the making of the law and by far the most to do with its administration.

While not ignorant of its shortcomings, I am proud of the profession. To it as student, practitioner and judge I have given over fifty years of constant, unswerving and faithful devotion. I appeal to its members to so live and act that, purer than the vestal virgins who watched the fires on the altars in the temples of imperial Rome, they shall ever be found ministering in that temple, the grandest built by human hands, the temple of equal, universal and exact justice. So doing they will hasten the day when the prophetic vision of the seer of Patmos

shall be realized, and the new Jerusalem will be seen "coming down from God out of heaven, prepared as a bride adorned for her husband."

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THE CONCEPTION OF POSSIBILITY IN ITS RELATION TO CONDUCT.

When, in deliberation, we have several alternative lines of action before us, we naturally regard all of them as "possible." We may be forced to choose and, again, the number of alternatives may be limited, but out of these we are left free to choose whichever we prefer. All lines are open; they become closed only in the moment in which we select and carry out one. It is only as the selected alternative becomes actual that the others cease to be possible, which means that as soon and so long as our will is determined one way, no other way is possible; but as long as our will is still undetermined, and "our minds not yet made up," many ways are possible. Decision consists in the realization of one possibility to the exclusion of others. And though decision always operates under conditions which we accept, and either cannot or will not alter, yet within these fixed conditions it produces a *new* result. These conditions are not merely external and circumstantial. They include our characters and our habits; they take perhaps the form of some moral principle to which in our choice we wish to be true. Yet, thus stated as conditions, these are abstract and seem to possess no determining force. It is hard to say in what sense character, habit and principle are real, except as realized in act. And thus we feel that the result of our choice—in spite of the conditions to which it is subject—cannot be fixed and determined beforehand, but only *comes to be determined* in the moment of decision. We refuse to believe that the alternative possibilities which our decision now makes impossible, were impossible from the start, and seemed open only by an illusion born of ignorance.